

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:)	Chapter 7
)	Bankruptcy No. 18-14095
GLOBAL BARISTAS US LLC,)	
d/b/a Tully's Coffee,)	TRUSTEE'S RESPONSE TO OSBORN
)	MACHLER'S MOTION FOR RELIEF
Debtor(s).)	FROM STAY

COMES NOW the duly appointed trustee, Nancy James, through counsel, The Livesey Law Firm, and Rory C. Livesey, and files this response to Osborn Machler's Motion for Relief from Stay.

This is an involuntary case. The petition was filed on October 24, 2018. The order for relief was entered on November 30, 2018, and on the same date Osborn Machler filed the current motion.

The trustee was not appointed until December 3, 2018. The creditors' meeting is not scheduled until January 10, 2019. As this is an involuntary petition, the trustee has no schedules or records. The trustee has no way of evaluating the moving party's position in order to formulate a reasonable response. The motion as filed is lengthy and convoluted. It appears that Osborn Machler is seeking relief from the automatic stay to defend an appeal of a sanctions order obtained by the debtor and ostensibly assigned to Osborn Machler. The trustee requests that the motion either be denied without prejudice or continued for a minimum of 120 days so that the trustee can investigate the moving party's position.

To the extent the court is not willing to deny the motion or grant a continuance, the trustee objects to the provision in the proposed order that calls for a finding that the debtor's assignment of the judgment at issue to the moving party is not avoidable as a preference. Assuming the assignment was perfected on the date of the petition, even a cursory view of the facts as stated in the

1 motion shows the assignment is a preference under 11 U.S.C. § 547(b). However, at this point in
2 the administration of the estate, the trustee has no idea whether Osborn Machler has available to it
3 any of the defenses to a preferential transfer provided by 11 U.S.C. § 547(c). Under
4 11 U.S.C. § 547(g), the burden of proving any defense is on Osborn Machler. As such, it is
5 inappropriate for the court to make that finding at this time.

6 WHEREFORE, the trustee requests that the court deny the motion without prejudice or, in
7 the alternative, continue it for a minimum of 120 days.

8 RESPECTFULLY SUBMITTED this 14th day of December, 2018.

9 THE LIVESEY LAW FIRM

10 /S/ Rory C. Livesey

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12 Rory C. Livesey, WSBA #17601
13 Attorney for Trustee
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